



City of Hampton, VA

Meeting Minutes

City Council

22 Lincoln Street
Hampton, VA 23669
www.hampton.gov

Ross A. Kearney, II
Will Moffett
Joseph H. Spencer, II
Molly Joseph Ward, Mayor

Christopher G. Stuart
Donnie R. Tuck
George E. Wallace

Staff:
Mary Bunting, City Manager
Cynthia Hudson, City Attorney
Katherine K. Glass, CMC, Clerk of Council

Wednesday, May 2, 2012

12:57 PM

Council Chambers, 8th Floor, City Hall

CALL TO ORDER/ROLL CALL

MOLLY JOSEPH WARD PRESIDED

PRESENT: Ross A. Kearney, II, Will Moffett, Joseph H. Spencer, II, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace

Mayor Ward welcomed everyone to the afternoon work session.

AGENDA

1. 12-0189 Budget Work Session

Ms. Bunting announced the purpose of today's meeting is to brief Council and the community on where we are regarding the budget. Last week, the details on how the State budget would play out on the local level were not available; therefore, she thought it would be helpful for Finance Director Mr. Karl Daughtrey to give an update on the impact of the State budget. Ms. Bunting noted that following the update from Mr. Daughtrey, she would provide an update on how the School system's request of \$1 million might be met.

Clerk of Council Ms. Katherine Glass handed the members of Council a worksheet regarding the City's adjustments to revenues based on the FY13 approved State budget. A copy of the handout is attached to the minutes.

Mr. Daughtrey greeted the members of Council and updated them on how the State budget will impact the City. The General Assembly adopted their budget on April 18th. City staff has worked with State staff to prepare updates on the local impact.

Mr. Daughtrey elaborated on the adjustments in revenues based on the information provided by the Virginia Compensation Board: (1.) we can expect an additional \$79,919 above what we anticipated for reimbursements for Constitutional Officers' salaries and fringe benefits. (2.) we receive \$4 per day for inmates and can expect an additional \$26,571 for jail per diem. (3.) we can anticipate \$128,005 for the Department of Social

Services Healthy Families Funding Program. Part of this is happening because many Healthy Families Programs are closing due to budget cuts causing funding to be reallocated to programs that remain open. (4.) local aid to the Commonwealth of Virginia. In 2009, as part of balancing its budget, the State set aside \$50 million to cut payments to localities and it has recently been increased to \$60 million. As part of this budget process, it was reduced back to \$50 million which gives us additional revenue of \$207,235 for Local Aid to the Commonwealth of Virginia. We write a check to the State each year for approximately \$1.2 million; however, this amount may be reduced to \$1.1 million. (5.) Virginia Juvenile Community Crime Control Act (VJCCCA) is funding we receive for the court service unit for Juvenile Justice Programs. This program was cut approximately 11%; and, therefore, we expect a reduction of revenues of \$34,008. (6.) the State will now keep a portion of our local fees and fines collected by the General District Court and Juvenile District Court on behalf of cities. Any fees in excess of 40% of total local and State collections by the District Courts, the State will keep one-half of that excess. Based on the numbers provided by the auditors of public account, we anticipate it would be zero for us. Mr. Daughtrey noted he was not comfortable with the numbers they provided; and therefore, we built in a conservative estimate of \$75,000 for reduction to our local fines and fees.

Councilman Stuart asked Mr. Daughtrey to elaborate on the last item regarding the State receiving a portion of local fees being collected by Hampton Courts.

Mr. Daughtrey explained the State Court collects all local fees and fines pursuant to our Ordinance. For example, speeding tickets or court appointed attorneys fees, are collected on behalf of the City and are remitted to us on a monthly basis. State law will require local courts to remit funds collected directly to the State and the State then determines what portion of the local fees they keep and what portion is remitted to us on a monthly basis. This is a new mandate. He noted they set these monies aside for the State literary fund and use it to help balance money they give for the School system.

Mr. Daughtrey noted there has been a lot of protest by local governments, and there are some dedicated revenues that will be taken, for example, court security and court maintenance. This is an unusual bill and there has been much outcry from the Virginia Municipal League and other local governments regarding this.

Councilman Kearney commented that part of the issue is that these are local fees and fines and if a local law is broken, we collect the money, yet 40% will go to the State.

Mr. Daughtrey stated it is actually one-half of the excess of 40% that will go to the State. Mr. Daughtrey noted that there has been some legal discussion regarding whether or not the State can do this.

Councilman Kearney commented years ago, the General Assembly took funds from our ABC stores costing the City of Hampton more than \$1.3 million per year when the idea of the creation of ABC stores following prohibition was to be a source of revenue for the local communities. He said he can foresee lottery sales going to State government. He added these mandates are costly to future generations within our community.

Ms. Bunting noted we filed a protest regarding this mandate and the ABC mandate; however, the State is searching for creative ways to balance their budget and there may be a legal challenge regarding whether or not they can pursue this mandate. She

explained the State's logic is we are eating into their share of the pie because we write so many local tickets against our local Ordinances. She added that State troopers don't patrol local roads, so she doesn't really understand the logic and even with the restoration of part of that money, we will still be writing a check to the Commonwealth to support the Commonwealth's budget to the tune of \$1.1 million.

Councilman Kearney said when the no-tax increase pledges are signed at the General Assembly, they refuse to meet their obligations and in turn pass down the source of money to local governments which raise taxes in order to exist, which is unfair. Ms. Bunting concurred.

Councilman Stuart asked the City Attorney to keep Council abreast of the status of the legal action. Ms. Hudson stated she would do that and noted there are discussions regarding the legality of it; however, when challenging a State action, you run into the legal premise that we are only permitted to do what they allow us to do.

Mr. Daughtrey continued his presentation. The overall impact has a net increase in revenues of \$332,722 as shown on the handout.

Ms. Bunting stated with the increased revenue, we need to review the painful budget cuts that were made and determine how to re-prioritize (replace) the revenue in areas such as community center hours. She noted since we just received this data, we are not prepared to state exactly how we would use the money and would also like to know what Council would like to see considered as staff makes the recommendation.

Ms. Bunting updated Council on the School Board's request. The Schools received \$1.3 million in flexible funds to restore a portion of their cuts, and need an additional \$1 million to restore all of their cuts; therefore, the School Board asked us to entertain a one cent tax increase which is called for under the local funding formula. We have advertised a hearing to take place at the May 9th meeting to allow their request to be heard. She has had several conversations with School Superintendent Dr. Linda Shifflette and her budget team to find a potential solution to bridge the \$1 million gap. With the exception of the Mayor, each member of Council has met with School Board members to discuss their request. It is always our desire to avoid a tax increase if possible. She expects guidance from the School Board regarding the options staff has put forward and will update Council at a later date. She reiterated the hearing has been advertised so that the School Board can have a full hearing on the matter in the event we are not able to find a way to bridge the million dollar gap.

Ms. Bunting stated today's meeting is also reserved for Council to voice their concerns and thoughts. We potentially have \$300,000 as well as funding in contingency that was set aside assuming we may have negative impacts from the State; and therefore, Council needs to give staff direction regarding what they want staff to consider when revising the recommendation, which will be provided next week. She noted several questions were answered in the Friday memo and staff is prepared to re-address those issues in public if necessary. For example, one of the questions raised was why haven't we tried to get York County to raise the cigarette tax.

Ms. Bunting stated, for the record, according to the Dillon Rule, counties in Virginia do not have the legal authority to assess cigarette tax and have asked through the Virginia Association of Counties (VACO) to get that authority; however, the General Assembly

has not granted that authority. Therefore, getting York County to raise their tax is not an option.

Councilman Stuart expressed concern for individuals who may be affected by the reduction in library hours because they may not have access to computers and/or may need a quiet place to study.

Ms. Bunting commented that reductions in the libraries and community centers were painful decisions to make; however, they were made because the public indicated a tolerance for them. There were some unintended consequences, for example, the loss of use of the Old Hampton Community Center pool on Mondays. These are some of the areas that she and staff would like to consider restoring.

Mayor Ward asked whether or not this would impact afterschool programs. Ms. Bunting replied we were not scaling back hours at community centers during the summer; however, since afterschool programs are fee based and as long as there are enough enrollments, we were going to continue to offer them. For example, there may be afterschool programs held at community centers, but the rest of the community would not have access to the facility.

Vice Mayor Wallace asked if this budget contains funding for staff to assume the responsibility or opportunities at the facilities we will inherit from Fort Monroe, particularly as it relates to the senior citizens' pool. Ms. Bunting replied since the Army has not yet transferred the land, we do not know how much the payment in lieu of taxes will be. Only certain parts of Fort Monroe are leased to the FMA and they are only legally obligated for the parts that are leased to them. However, the parts that are leased to them don't generate enough revenue for us to bring on the community center. Once the Army transfers it and has more property within their control, we may generate enough. The budget was predicated on opening it when there was adequate in lieu of tax money to support it. We wouldn't be using general tax dollars from the community to open that community center. Vice Mayor Wallace asked if that also applied to staffing the swimming areas. Ms. Bunting replied yes.

Vice Mayor Wallace commented he would like to see youth and family programs be considered for restoration because they are preventive programs to preclude problems later which may be more expensive.

Mayor Ward said she would like for staff to look at the Police Department. Statements have been made in the past that we did not want to see core services such as police and fire impacted in budget cuts. We have already lost a Major's position and she would like for the City Manager to look at whether or not there are other needs regarding Police and Fire Departments.

Councilman Moffett noted a number of business owners have contacted Council regarding their concerns with the cigarette tax and asked how much consideration has been given regarding the cigarette tax.

Ms. Bunting stated there have been many discussions regarding the cigarette tax since last week's Public Hearing. She contacted the Newport News City Manager to determine whether or not they had a similar response and whether or not they were modifying their request. The City of Newport News indicated none of their franchise

owners protested their cigarette tax increase, and therefore, they were planning to move forward with the tax increase. She continued stating the challenges the convenience store owners face is the disparity in the profit margin between York County and Hampton stores as well as the fact that customers are buying other ancillary items in York County. We explained to several of the convenience store owners why we cannot do that and they understand.

Ms. Bunting said she has encouraged the Newport News City Manager to encourage his Council and other Councils to support VACO next year in their request to get the General Assembly to give a cigarette tax so that we can level the playing field. She said perhaps if the counties and cities lobbied together, we may be able to get the abilities for counties. We could look at not increasing the cigarette tax given we have the State revenue; however, the challenge will be to determine which has more impact – keeping the cigarette tax and restoring things such as community centers or not raising the cigarette tax and having less revenue available to restore programs. She reminded everyone that the proposed ten cent cigarette tax increase would generate approximately \$265,000, and when compared to the State revenue we received which exceeded our budget estimate, it consumes most of that money. Our thought was the cigarette tax was an add on, but in conversation with store owners, they make a decision not to add the cigarette tax onto the existing price and capture that money from the consumer, but rather they take a lower profit margin. They have the option of adding the tax on rather than taking it out of their profit margin. When we proposed it, we didn't think we were hurting small businesses.

Councilman Stuart said having additional funds is necessary to continue the balancing of the budget as we look at perspective tax increases or fees. Many people in the small business industry attended the last Public Hearing and he was impressed that it was not an organized lobby effort; instead, it was a number of individuals that balance their own budgets while keeping their doors open. He asked staff to not only look at how we can spend the \$300,000, but also look at how we can assist our small businesses by not raising certain fees.

Ms. Bunting reminded the members of Council to inform staff of any additional thoughts they have so that staff can put together a proposal early next week. At that time, she will also have additional information regarding the School budget. At the May 9th meeting, we will discuss whether or not Council approves of the proposal and will make decisions regarding the City side of the budget in order to prepare budget amendments.

Councilman Spencer said he inquired about inspection fees that were to be proposed by the Fire Marshal and asked Assistant City Manager Mr. James Gray to give comments regarding the discussions he has had regarding those fees.

Mr. Gray stated he and Councilman Spencer discussed how the fire prevention fee would be applied to businesses in the City. For example, a property owner of a 10,000 square foot strip shop with five suites would be subjected to a 10,000 square foot inspection fee of \$100; however, the individual suites within that strip shop would receive regular inspections based on the cycle the Fire Marshal applies in their priority schedule. Each individual suite owner would not be subjected to the fee. A \$50 re-inspection fee applies if the business owner did not comply with the initial inspection and if the violation was not corrected on the re-inspection. He noted the fee schedule is based on the square footage of the premises and ranges from a \$25 to \$375 annual fee.

At Ms. Bunting's request, Mr. Gray addressed how often businesses receive inspections. The goal of the Fire Marshal's office is to inspect every business annually. However, given the resources involved and the number of inspections, inspections are done on a priority schedule depending on the priority of the business, the risk involved in that business and the type of process it has. Sometimes businesses may be inspected on the fourteenth month versus twelfth if they are not a high risk. Ms. Bunting added that the inspections would occur no more than once per year. Mr. Gray concurred and stated usually, the only time businesses receive more than one per year is when the Fire Department receives complaints about the business.

Councilman Stuart commented that inspections are done to ensure the safety of buildings occupants and asked how this proposed fee structure covers disgruntled employees or customers who may file multiple complaints throughout the year.

Mr. Gray explained the annual fee does not apply to complaints and is billed automatically to the property owner based on the square footage. If there are follow-up inspections required due to complaints, the Fire Marshal would respond to them regardless of the number. If the complaint resulted in a violation notice being written and a follow-up inspection is required, there may be a re-inspection fee if the violation was not corrected at the follow-up inspection. For example, it is not unusual for the Fire Marshal to get complaints about over-crowding or blocked exit doors at a night club or place of assembly, so they may respond more than once per year to a particular business regarding a complaint, but that inspection would not generate another annual inspection fee.

Councilman Stuart clarified he was referring to unjustifiable complaints from individuals being malicious.

Ms. Bunting emphasized that sometimes violations that a company may be unaware of are discovered, and in those cases, businesses are allowed one opportunity to correct the problem without being charged the re-inspection fee. However, the re-inspection fee applies when the Fire Marshal returns for re-inspection and determines the problem has not been corrected.

Councilman Stuart stated it appears the system has been thought through but Council's concern is whether or not it should place another burden on property owners and small business owners.

Councilman Kearney commented that some time ago, an unauthorized person inspected Jack's Restaurant late one night, so his concern is who will be doing the inspections.

Mr. Gray replied annual inspections and complaints are handled by the Fire Marshal's office and the fire inspectors assigned to the office. Firefighters do pre-planning where they visit various businesses to assess hazards, learn what is in the district, learn the different types of buildings and learn about access to the buildings and electrical cut offs. Regular fire code inspections for the purpose of identifying fire hazards are done by the Fire Marshal's office.

Councilman Kearney asked if station 2, for example, checks restaurants in the Phoebus community and makes recommendations for correcting violations, will an inspector do the same thing at a later date.

Mr. Gray clarified that firefighters do not have the training and certification required to enforce the fire code. When they identify hazards, they notify the business owner that it needs to be corrected and they notify the Fire Marshal's office to handle the code enforcement. He explained that the inspection is an educational and advising process to the business owner, but if the business does not correct the problem through education and the initial inspection, then the Fire Marshal's office has the enforcement authority to get correction or issue a summons to be handled through the court process.

Councilman Kearney noted he was inquiring about the double inspection. He said in the past, the business community has had open arms which helps build the relationship with the Fire Department which usually gets a high satisfaction rating because of the service. He said his concern was midnight inspections at restaurants which are fully involved and cooperative in operations.

Mr. Gray said the fire companies do not usually do their pre-planning in restaurants or night clubs at night; however, the Fire Marshals do routine inspections to check on occupant loads and exit doors, particularly when there is a potential for life hazards which exist at night. He noted the inspections are not always scheduled and are done for the purpose of making sure people can enjoy those establishments in a safe environment.

Vice Mayor Wallace commented that there is a distinction between the fire planning which the station Captain and his crew do versus what the Fire Marshal does. Mr. Gray concurred and clarified that the pre-planning process is when firefighters get an orientation of buildings to learn about things such as emergency gas and electrical cut offs, location of fire hydrants and sprinkler system connections; however, the fire code enforcement handled by the Fire Marshal's office includes annual inspections to ensure commercial structures are in compliance with the local fire prevention code. Mr. Gray noted that they are two different processes designed to ensure people are safe while shopping and enjoying restaurants, for example.

At Councilman Spencer's request, Mr. Gray elaborated on what the revenue collected from inspection fees will be used for. The inspection fees in year one are estimated to generate approximately \$250,000 which will return to the Fire Department to support its operations and equipment, most of which is earmarked for capital needs for fire apparatus.

Ms. Bunting added that we will soon need to replace fire engines. While they depreciate over time, they are very expensive pieces of equipment and our depreciation allocations do not fully cover the cost of purchasing new engines and ambulances; therefore, that money will be dedicated for that purpose.

Councilman Spencer stated it is important the public understands the reason for this dedicated revenue source, why we are considering it and that the intention is not to increase taxes or fees; rather, the dedicated source is extremely important for capital needs.

Ms. Bunting concurred with Councilman Spencer, stressed the importance of us having modern technology and equipment and noted if we did not implement these fees, additional cuts would have been made in the budget in order to have an equipment upgrade. She also noted that businesses in other cities in our region already pay these fees and we historically have not and therefore thought it was appropriate. She reiterated that we are not just taking money from people and ensured the public that the fees are for a purpose.

Assistant Fire Chief/Marshal Maurice Wilson greeted the members of Council and gave a brief description of his department's responsibilities. His staff consists of three fire inspector/code enforcers and three fire investigators, and his office handles fire code enforcement for the City.

Mr. Wilson addressed Councilman Kearney's concern regarding the difference between fire inspector visits and firefighter incident surveys. The purpose of a pre-planned visit is to familiarize the firefighters with buildings in the event they respond to an emergency; however, the Fire Marshal's function is to review the code enforcement aspect, to ensure the building maintains its original capacity and to ensure businesses are in compliance with fire code regulations that the State requires.

Mr. Wilson noted night inspections are for life-safety purposes and are typically done once or twice per year to check for life-safety egress and over-crowding problems. He said they receive many citizen complaints regarding over-crowding which triggers them to investigate those issues. He said their philosophy is to educate prior to enforcing and this program will give them the tool to do that. Currently, the only way to get compliance is by writing a summons to take people to court and potentially giving them a criminal record which defeats the purpose of what they are trying to accomplish.

Mr. Wilson opened the floor for questions from Council. As there were no questions, the meeting adjourned at 1:54 p.m.

PRESENTED by Mary Bunting, City Manager, and Karl Daughtrey, Finance Director.

Molly Joseph Ward
Mayor

Katherine K. Glass, CMC
Clerk of Council

Date approved by Council _____

City of Hampton
Adjustments to Revenues Based on the Approved State Budget
FY2013

Description	Net Increase (Decrease) in Revenue	Budget
Compensation Board - Constitutional Officers	\$	79,919
Compensation Board - Jail Per Diem		26,571
Department of Social Services - Health Families Funding		128,005
Local Aid to Commonwealth of Virginia		207,235
Virginia Juvenile Community Crime Control Act(VJCCCA)		(34,008)
Local fees and fines collected by the District Courts in excess of 40% of total state and local fines and fees collected. State will maintain one-half of local collections in excess of 40% of total collections .		(75,000)
Net Increase in Revenues	\$	332,722